
The EPA Administrator signed the following final rule on June 6, 2005. It is being submitted for publication in the Federal Register. While EPA has taken steps to ensure the accuracy of this Internet version, it is not the official version of the rule. Please refer to the official version in a forthcoming Federal Register publication and on GPO's Web Site. The rule will likely be published in the Federal Register in August 2005. You can access the Federal Register at: http://www.access.gpo.gov/su_docs/aces/aces140.html. When using this site, note that "text" files may be incomplete because they don't include graphics. Instead, select "Adobe Portable Document File" (PDF) files.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[AMS-FRL-7937-3]

RIN 2060-AN19

Control of Emissions of Air Pollution From Diesel Fuel

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to correct, amend, and revise certain provisions of the Highway Diesel Rule adopted on January 18, 2001 (66 FR 5002), and the Nonroad Diesel Rule on June 29, 2004 (69 FR 38958). First, it makes minor corrections to clarify the regulations governing compliance with the diesel fuel standards. These minor corrections focus primarily on the Nonroad Rule, however, some may affect provisions contained in the Highway Rule that were overlooked at the time the Nonroad Rule was finalized. Second, it amends the designate and track provisions to account for companies within the fuel distribution system that perform more than one function related to fuel production and/or distribution. This will alleviate the problem of inaccurate volume balances due to a company performing multiple functions. Finally, with respect to the generation of fuel credits, it revises the regulatory text to allow refiners better access to early highway diesel fuel credits. The intention of this amendment is to help ensure a smooth transition to ultra low-sulfur diesel fuel nationwide.

DATES: This direct final rule is effective on [insert date 45 days after Federal Register publication] without further notice, unless we receive adverse comments by [insert date 30 days after Federal Register publication] or receive a request for a public hearing by [insert date 15 days after Federal Register publication]. As explained in section II below, we do not expect to hold a public hearing, however, if we receive such request we will publish information related to the timing and location of the hearing and the timing of a new deadline for public comments. If any adverse comments or requests for a hearing are received within the time frame described above, EPA will publish a timely withdrawal in the Federal Register informing the public that this rule will not take effect.

ADDRESSES: Comments: All comments and materials relevant to this action should be submitted to Public Docket No. OAR-2005-0134 at the following address: U.S.

Environmental Protection Agency (EPA), Air Docket (6102), Room M-1500, 401 M Street, SW, Washington, DC 20460. Materials related to this rulemaking are available at EPA's Air Docket for review at the above address (on the ground floor in Waterside Mall) from 8:00 a.m. to 5:30 p.m., Monday through Friday, except on government holidays. You can reach the Air Docket by telephone at (202) 260-7548 and by facsimile at (202) 260-4400. You may be charged a reasonable fee for photocopying docket materials, as provided in 40 CFR part 2.

FOR FURTHER INFORMATION CONTACT: Tia Sutton, U.S. EPA, National Vehicle and Fuels Emission Laboratory, Assessment and Standards Division, 2000 Traverwood, Ann Arbor MI 48105; telephone (734) 214-4018, fax (734) 214-4816, e-mail sutton.tia@epa.gov or Emily Green, see address above; telephone (734) 214-4639, fax (734) 214-4816, e-mail green.emilya@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Regulated Entities

This action will affect companies and persons that produce, import, distribute, or sell highway and/or nonroad diesel fuel. Affected Categories and entities include the following:

Category	NAICS Code ^a	Examples of potentially affected entities
Industry	324110	Petroleum refiners.
Industry	422710	Diesel fuel marketers and distributors.
Industry	484220	Diesel fuel carriers.

^a North American Industry Classification System (NAICS)

This list is not intended to be exhaustive, but rather provides a guide regarding entities likely to be affected by this action. To determine whether particular activities may be affected by this action, you should carefully examine the regulations. You may direct questions regarding the applicability of this action as noted in "FOR FURTHER INFORMATION CONTACT."

B. How Can I Get Copies Of This Document?

1. Docket. EPA has established an official public docket for this action under Air Docket No. OAR-2005-0134. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information

restricted from disclosure by statute. The official public docket is the collection of materials that is available for public viewing at the Air Docket in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW, Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the Air Docket is (202) 566-1742.

2. Electronic Access. This direct final rule is available electronically from the EPA Internet Web site. This service is free of charge, except for any cost incurred for internet connectivity. The electronic version of this final rule is made available on the date of publication on the primary web site listed below. The EPA Office of Transportation and Air Quality also publishes Federal Register notices and related documents on the secondary web site listed below.

a. <http://www.epa.gov/docs/fedrgstr/EPA-AIR> (either select desired date or use Search features).

b. <http://www.epa.gov/otaq> (look in What's New or under the specific rulemaking topic)

Please note that due to differences between the software used to develop the documents and the software into which the document may be downloaded, format changes may occur.

C. Why is EPA Proposing a Direct Final Rule?

EPA is publishing this rule without prior proposal because we view this action as noncontroversial and anticipate no adverse comment. However, in the "Proposed Rules" section of today's Federal Register publication, we are publishing a separate document that will serve as the proposal to adopt the provisions in this direct final rule if adverse comments are filed. If EPA receives adverse comment on one or more distinct amendment, paragraph, or section of this rulemaking, or receives a request for a hearing within the time frame described above, we will publish a timely withdrawal in the Federal Register indicating which provisions are being withdrawn due to adverse comment. We will address all public comments received in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Any distinct amendment, paragraph, or section of today's rulemaking for which we do not receive adverse comment will become effective as indicated in the DATES section above, notwithstanding any adverse comment on any other distinct amendment, paragraph, or section of today's rule.

D. How and To Whom Do I Submit Comments?

You may submit comments on this direct final rule as described in this section. You should note that we are also publishing a notice of proposed rulemaking in the

“Proposed Rules” section of today’s Federal Register, which matches the substance of this direct final rule. Your comments on this direct final will be considered to also be applicable to that notice of proposed rulemaking. You may submit comments electronically, by mail, by facsimile, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked “late.” EPA is not required to consider these late comments.

1. Electronically. If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM and in any other accompanying materials to ensure that you can be identified as the submitter of the comment. It is EPA’s policy that we will not edit your comment, and any identifying or contact information provided will allow EPA to contact you if we cannot read your comment due to technical difficulties or need further information on the substance of your comment. If EPA cannot contact you in these circumstances, we may not be able to consider your comment. Contact information provided in the body of the comment will be included as part of the comment placed in the official public docket and made available in EPA’s electronic public docket.

i. EPA dockets. Your use of EPA’s electronic public docket to submit comments to EPA electronically is EPA’s preferred method for receiving comments. Go directly to EPA Dockets at <http://www.epa.gov/edocket> and follow the online instructions for submitting comments. Once in the system, select “search,” and then key in Docket ID No. OAR-2005-0134. The system is an “anonymous access” system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. Disk or CD ROM. You may submit comments on a disk or CD ROM that you mail to the mailing address identified in “ADDRESSES” above. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. By Mail. Send two copies of your comments to: Air Docket, Environmental Protection Agency, Mailcode: 6102T, 1200 Pennsylvania Ave., NW, Washington, DC, 20460, Attention Docket ID No. OAR-2005-0134.

3. By Hand Delivery or Courier. Deliver your comments to: EPA Docket Center, Room B102, EPA West Building, 1301 Constitution Avenue, NW, Washington, DC, Attention Air Docket ID No. OAR-2005-0134. Such deliveries are only accepted during the Docket’s normal hours of operation as identified above.

4. By Facsimile. Fax your comments to: (202) 566-1741, Attention Docket ID. No. OAR-2005-0134.

II. Summary of Rule

On January 18, 2004, we published the final Highway Rule (66 FR 5002) which is a comprehensive national program to greatly reduce emissions from diesel engines by integrating engine and fuel controls as a system to gain the greatest air quality benefits. Subsequently, we adopted the Nonroad Rule (69 FR 38958) on June 29, 2004 which took a similar approach covering nonroad diesel equipment and fuel to further the goal of decreasing harmful emissions. After promulgation of these rules, we discovered several typographical errors and it also became evident that several additions or deletions were necessary to clarify portions of the regulations. This rule corrects those errors and serves to clarify the regulations to facilitate compliance.

Along with these minor clarifications, the rule also modifies the text of the designate and track provisions to include provisions for companies that perform more than one function in the fuel system. For example, as these provisions are currently written, fuel distributors are only required to report on the volumes of fuel received and delivered. If the same company also produces fuel internally (acts as a refiner or importer), its receipts and deliveries reported will not balance. This rule will allow such companies to balance their volume reports in compliance with the designate and track regulations. Finally, this rule revises the regulatory text of the Nonroad Rule to allow refiners greater access to early fuel credits. The purpose of this change is to ensure a smooth transition to ultra low-sulfur diesel fuel nationwide.

Because EPA views the provisions of the action as noncontroversial and does not expect adverse comment, it is appropriate to proceed by direct final rulemaking. If we receive adverse comment on one or more distinct amendments, paragraphs, or sections of this rulemaking, or receive a request for hearing within the time frame described above, we will publish a timely withdrawal in the Federal Register indicating which provisions will become effective and which provisions are being withdrawn due to adverse comment. Any distinct amendment, paragraph, or section of today's rulemaking for which we do not receive adverse comment will become effective on the date set out above, notwithstanding any adverse comment on any other distinct amendment, paragraph, or section of today's rule.

III. Final Rulemaking Clarifications and Other Minor Corrections

Table III-1, below, describes the rule clarifications and minor corrections that this rule is establishing.

Table III-1.	
Rule Clarifications and Minor Corrections	
Section	Description of Clarification or Correction

§ 80.510(h)	Revised to change “and” to “or” for clarity.
§ 80.525(a)	Revised to clarify that nonroad 15 ppm sulfur fuel is included in this provision.
§ 80.525(c)	Revised to cite to nonroad downstream standards for consistency.
§ 80.531(a)(2)	Revised to correct text in formula.
§ 80.550(b)(3)	Revised to correct the date “2003” to “2002.”
§ 80.551(f)	Revised to change the application subsection from 80.550(e) to 80.550(d) and add clarification that approval is based on information submitted under paragraph (c)(1)(ii) and/or (c)(2)(ii). <i>NOTE: the version of this rule that was signed on July 6, 2005 refers to “(c)(ii)”;</i> as shown above, the corrected text is “(c)(1)(ii) and/or (c)(2)(ii).”
§ 80.580(c)(1)	Revised to correct the cross reference as follows: “(a)(2)” to “(b)(1).”
§ 80.580(c)(2)(i)	Revised to correct the cross reference as follows: “(a)(2)(ii)” to “(b)(2).”
§ 80.586	Revised to correct a typographical error in the heading.
§ 80.590(a)(6)(i)	Revised to add text for clarity.
§ 80.591(b)(3)	Revised to add language for label clarity.
§ 80.594(b)(2)	Revised to add text clarifying that only 95 percent of fuel must meet the 15 ppm sulfur standard by June 1, 2006 and to add the word “the” for clarity.
§ 80.595(a)	Revised to add text that would include small refiners in certain circumstances.
§ 80.595(b)	Revised to delete unnecessary text for clarity.
§ 80.596(a)	Revised to add text to clarify unit of measurement in formula.
§ 80.599(a) and (a)(1)	Revised to change the dates for quarterly and annual compliance periods for consistency with the preamble (69 FR 39100, June 29, 2004) and section 80.601.
§ 80.599(b)(4)	Revised to change text to clarify components of formula.

§ 80.604(d)(5)	Revised to remove this batch reporting requirement to maintain consistency with EPA's response to comments, May 2004, p. 10-32, 10.3.3.3.
§ 80.613(a)(1)	Revised to add language clarifying that each element in the list must be demonstrated, as applicable, to avoid liability under this section.
pg. 39064 (...4.a.)	Revised to correct the text " <u>Where Credit₅₀₀ Limit = ...</u> " to " <u>Where Credit_{HS} Limit = ...</u> "
pg. 39046 (...4.b.)	Revised to add the value for Vol _{15hwy} as follows: " <u>Vol_{15hwy} ≡ Volume of 15 ppm sulfur diesel fuel produced and designated as highway.</u> "

IV. Final Rulemaking Corrections to Designate and Track Regulations

Table III-2, below, describes the changes to the Designate and Track regulations that this rule is establishing.

<p align="center">Table III-2. Corrections to the Designate and Track Regulations</p>	
Section	Description of Clarification or Correction
§ 80.599(b)(1), (b)(2), (c)(1), (c)(3), (d)(1) and (d)(2).	Revised to add text clarifying that, for purposes of calculation, total volume includes fuel "produced by or imported into the facility."
§ 80.599(e)(2) - (e)(5)	Revised to modify the existing value "I" to clarify that imported fuel is considered fuel produced rather than fuel received and to add a separate value (P) to account for total volume of fuel "produced by or imported into the facility."
§ 80.600(a)(6)	Revised to add text clarifying that batch records must include identification as to whether the batch was received into, produced by, imported into or delivered from the facility.
§ 80.600(a)(13)	Revised to add paragraph (a)(13) clarifying that "[r]efiners and importers that receive fuel from another facility must also comply with the requirements of paragraph (b) separately for those volumes."

§ 80.600(b)(1) and (b)(1)(i) - (b)(1)(v)	Revised to add text clarifying that recordkeeping requirements also apply to batches of fuel produced at the facility.
§ 80.600(b)(2) and (b)(3)	Revised to add text clarifying that an accurate batch identification includes an indication whether the batch was produced by or imported into the facility, where applicable.
§ 80.601(a)(2)	Revised to add paragraph (a)(2)(i) using the existing text and add paragraph (a)(2)(ii) to include the total volume of fuel produced or imported by the facility.
§ 80.601(a)(4)(iii) - (a)(4)(vi)	Revised to add paragraph (a)(4)(iii) to require reporting of total volumes produced or imported at truck loading terminals and to redesignate the subsequent provisions for consistency.
§ 80.601(b)	Revised to correct the cross reference “(e)(2)” to “(d)(2).”
§ 80.601(b)(1)	Revised to add paragraph (b)(1)(i) using the existing text and add paragraph (b)(1)(ii) to include the total volume of fuel produced or imported by the facility.
§ 80.601(b)(3)	Revised to add a new paragraph (b)(3)(ii) requiring annual reporting of certain fuels produced or imported at the facility and to redesignate the subsequent provisions for consistency.

V. Final Rulemaking Changes to Motor Vehicle Diesel Fuel Credits

During the development of the Highway Rule, a number of provisions were included to ensure widespread availability of the mandated Ultra-Low Sulfur Diesel (ULSD, 15 ppm sulfur fuel) at the commencement of the program. Section 80.531 of the Highway Rule contains one such provision providing refiners a credit for early production of ULSD. It uses a tiered structure to prohibit a potential surplus of credits that could delay availability of ULSD to the 2007 model year vehicles.

The ability to generate early credits is limited by restrictions contained in the regulatory text. Section 80.531(c)(1) contains one such restriction providing that a refiner or importer may only generate credits for each gallon of ULSD dispensed at retail outlets or at wholesale-purchaser consumer facilities from June 1, 2005 through May 31, 2006. In effect, this language curtails credit production by providing credit to refiners only for volumes delivered to retail as 15 ppm rather than the volumes produced. Thus, if the distribution system was unable to deliver it as 15 ppm, no credit would be given.

Since the rule was finalized, however, concern over ULSD availability has subsided. Refiners' precompliance reports indicate that as of June 1, 2006, ninety-five percent of diesel fuel will be produced at the ULSD standard, well in excess of the required eighty percent. Simultaneously, concerns have arisen with respect to the smooth transition of the fuel distribution system to ULSD on June 1, 2006. Pipelines and terminals are currently seeking batches of ULSD from refiners to work through possible contamination issues prior to commencement of the program, but finding it difficult to obtain them.

The limitations imposed on the generation of early credits, coupled with the cost of early ULSD production, create an economic disincentive for refiners to produce this fuel for use in testing the fuel distribution system. Allowing refiners better access to early credits would provide additional economic incentive for production and, hence, supply the fuel necessary to test the ability of the distribution system to effectively deliver the fuel on specification. For this reason, we are now allowing refiners to claim credit for the entire volume of ULSD delivered into the distribution system beginning May 1, 2005.

Table III-3.	
Changes to Motor Vehicle Diesel Fuel Credit Regulations	
Section	Description of Clarification or Correction
§ 80.531(c)	Revised to allow refiners increased incentive to produce ULSD fuel for the distribution system.
§ 80.531(c)(2)(i)	Revised to change the date for providing notice of intent to generate early credits for consistency with amended credit provisions.
§ 80.531(d)(1)	Revised to restrict cross reference for consistency with amended credit provisions.
§ 80.531(d)(4)	Revised to remove the plan requirements specified in paragraph (d)(4) for consistency with amended credit provisions.

VI. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency is required to determine whether this regulatory action would be "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The order defines a "significant regulatory action" as any regulatory action that is likely to result in a rule that may:

- Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;
- Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or,
- Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, EPA has determined that this final rule is not a "significant regulatory action" as it merely corrects several typographical errors, modifies the designate and track regulations to account for companies that perform more than one function, and provides increased incentive for early compliance with the ultra low-sulfur diesel fuel requirements. There are no new costs associated with this rule. Therefore, this final rule is not subject to the requirements of Executive Order 12866. A Final Regulatory Support Document was prepared in connection with the original regulations for the Highway Rule and Nonroad Rule as promulgated on January 18, 2001 and June 29, 2004, respectively, and we have no reason to believe that our analyses in the original rulemakings were inadequate. The relevant analyses are available in the docket for the January 18, 2001 rulemaking (A-99-061) and the June 29, 2004 rulemaking (OAR-2003-0012 and A-2001-28)¹ and at the following internet address: <http://www.epa.gov/cleandiesel>. The original action was submitted to the Office of Management and Budget for review under Executive Order 12866.

B. Paperwork Reduction Act

This action does not impose any new information collection burden, as it merely corrects several typographical errors, modifies the designate and track regulations to

¹During the course of the Nonroad Rule, the Agency converted from the legacy docket system to the current electronic docket system (EDOCKET).

account for companies that perform more than one function, and provides increased incentive for early compliance with the ultra low-sulfur diesel fuel requirements. However, the Office of Management and Budget (OMB) has previously approved the information collection requirements for the original Highway Rule (66 FR 5002, January 18, 2001) and the Nonroad Rule (69 FR 38958, June 29, 2004) and has assigned OMB control number 2060-0308 (EPA ICR #1718). A copy of the OMB approved Information Collection Request (ICR) may be obtained from Susan Auby, Collection Strategies Division; U.S. Environmental Protection Agency (2822T); 1200 Pennsylvania Avenue, NW, Washington, DC 20460 or by calling (202) 566-1672.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this direct final rule. EPA has also determined that this rule will not have a significant economic impact on a substantial number of small entities. For purposes of assessing the impacts of this final rule on small entities, a small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) size standards at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. This direct final rule merely corrects several typographical errors, modifies the designate and track regulations to account for companies that perform more than one function, and provides increased incentive for early compliance with the ultra low-sulfur diesel fuel requirements.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with “federal mandates” that may result in expenditures to state, local, and tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation of why such an alternative was adopted.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed a small government agency plan under section 203 of the UMRA. The plan must provide for the following: notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

This rule contains no federal mandates for state, local, or tribal governments as defined by the provisions of Title II of the UMRA. The rule imposes no enforceable duties on any of these governmental entities. Nothing in the rule would significantly or uniquely affect small governments. EPA has determined that this rule contains no federal mandates that may result in expenditures of more than \$100 million to the private sector in any single year. This direct final rule merely corrects several typographical errors, modifies the designate and track regulations to account for companies that perform more than one function, and provides increased incentive for early compliance with the ultra low-sulfur diesel fuel requirements. The requirements of UMRA therefore do not apply to this action.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled “Federalism” (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure “meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.” “Policies that have federalism implications” are defined in the Executive

Order to include regulations that have “substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.”

Under Section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, imposes substantial direct compliance costs, and is not required by statute. However, if the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the regulation, these restrictions do not apply. EPA also may not issue a regulation that has federalism implications and that preempts State law, unless the Agency consults with State and local officials early in the process of developing the regulation.

Section 4 of the Executive Order contains additional requirements for rules that preempt State or local law, even if those rules do not have federalism implications (i.e., the rules will not have substantial direct effects on the States, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government). Those requirements include providing all affected State and local officials notice and an opportunity for appropriate participation in the development of the regulation. If the preemption is not based on express or implied statutory authority, EPA also must consult, to the extent practicable, with appropriate State and local officials regarding the conflict between State law and Federally protected interests within the agency's area of regulatory responsibility.

This rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This direct final rule merely corrects several typographical errors, modifies the designate and track regulations to account for companies that perform more than one function, and provides increased incentive for early compliance with the ultra low-sulfur diesel fuel requirements. Although Section 6 of Executive Order 13132 did not apply to the Highway Rule (66 FR 5002) or the Nonroad Rule (69 FR 38958), EPA did consult with representatives of various State and local governments in developing these rules. EPA has also consulted representatives from STAPPA/ALAPCO, which represents state and local air pollution officials.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled “Consultation and Coordination with Indian

Tribal Governments” (59 FR 22951, November 6, 2000), requires EPA to develop an accountable process to ensure “meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.” “Policies that have tribal implications” is defined in the Executive Order to include regulations that have “substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.”

This rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. This rule does not uniquely affect the communities of Indian Tribal Governments. Further, no circumstances specific to such communities exist that would cause an impact on these communities beyond those discussed in the other sections of this rule. This direct final rule merely corrects several typographical errors, modifies the designate and track regulations to account for companies that perform more than one function, and provides increased incentive for early compliance with the ultra low-sulfur diesel fuel requirements. Thus, Executive Order 13175 does not apply to this rule.

G. Executive Order 13045: Children’s Health Protection

Executive Order 13045, “Protection of Children from Environmental Health Risks and Safety Risks” (62 FR 19885, April 23, 1997) applies to any rule that (1) is determined to be “economically significant” as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, Section 5-501 of the Order directs the Agency to evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to the Executive Order because it is not economically significant, and does not involve decisions on environmental health or safety risks that may disproportionately affect children.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This rule is not a “significant energy action” as defined in Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution or use of energy. This direct final rule merely corrects several typographical errors, modifies the designate and track regulations to account for companies that perform more than one function, and provides increased incentive for early compliance with the ultra low-sulfur diesel fuel requirements.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (“NTTAA”), Public Law 104-113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless doing so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (such as materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This direct final rule does not involve technical standards. It merely corrects several typographical errors, modifies the designate and track regulations to account for companies that perform more than one function, and provides increased incentive for early compliance with the ultra low-sulfur diesel fuel requirements. Thus, we have determined that the requirements of the NTTAA do not apply.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801, et seq., as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to Congress and the Comptroller General of the United States. We will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States before publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2) and will become effective [Insert date 45 days from date of publication]..

VII. Statutory Provisions and Legal Requirements

The statutory authority for this action comes from sections 211(c) and (i) of the Clean Air Act as amended 42 U.S.C. 7545(c) and (i). This action is a rulemaking subject to the provisions of Clean Air Act section 307(d). See 42 U.S.C. 7606(d)(1). Additional support for the procedural and enforcement related aspects of the rule comes from sections 144(a) and 301(a) of the Clean Air Act. 42 U.S.C. 7414(a) and 7601(a).

List of Subjects in 40 CFR Part 80

Fuel additives, Gasoline, Imports, Labeling, Motor vehicle pollution, Penalties, Reporting and recordkeeping requirements.

Dated: July 6, 2005.

Stephen L. Johnson, Administrator.

For the reasons set forth in the preamble, part 80 of the Code of Federal Regulations is amended as follows:

PART 80 – REGULATION OF FUELS AND FUEL ADDITIVES

1. The authority citation for part 80 continues to read as follows:

Authority: 42 U.S.C. 7414, 7521(l), 7545 and 7601(a).

2. Section 80.510 is amended by revising paragraph (h) introductory text to read as follows:

§ 80.510 What are the standards and marker requirements for NRLM diesel fuel?

* * * * *

(h) Pursuant and subject to the provisions of § 80.536, § 80.554, § 80.560, or § 80.561:

* * * * *

3. Section 80.525 is amended by revising paragraphs (a) and (c) to read as follows:

§ 80.525 What requirements apply to kerosene blenders?

(a) For purposes of this subpart, a kerosene blender means any refiner who produces NRLM or motor vehicle diesel fuel by adding kerosene to NRLM or motor vehicle diesel fuel downstream of the refinery that produced that fuel or of the import facility where the fuel was imported, without altering the quality or quantity of the fuel in any other manner.

* * * * *

(c) For purposes of compliance with §§ 80.524(b)(1) and 80.511(b)(1), the product transfer documents must indicate that the fuel to which kerosene is added complies with the 500 ppm sulfur standard for motor vehicle diesel fuel and is for use only in model year 2006 and older diesel motor vehicles, the fuel is properly downgraded pursuant to the provisions of § 80.527 to motor vehicle diesel fuel subject to the 500 ppm sulfur standard, or the applicable NRLM standard.

* * * * *

4. Section 80.531 is amended by revising the equation for V_{15} in paragraph (a)(2), revising paragraphs (c)(1), (c)(2)(i) and (d)(1), and removing and reserving paragraph (d)(4) to read as follows:

§ 80.531 How are motor vehicle diesel fuel credits generated?

(a) * * *

(2) * * *

$$V_{15} = V_{15} + V_{500} \quad * \quad * \quad *$$

* * * * *

(c) * * *

(1) Beginning June 1, 2005, a refiner or importer may generate one credit for each gallon of motor vehicle diesel fuel produced or imported that meets the 15 ppm sulfur standard in § 80.520(a)(1) that is delivered into the distribution system. Such refiners and importers must comply with the requirements of this paragraph (c) and paragraph (d) of this section.

(2)

(i) Any refiner or importer planning to generate credits under this paragraph must provide notice of intent to generate early credits at least 30 calendar days prior to the date it begins generating credits under this paragraph (c).

* * * * *

(d) * * *

(1) The designation requirements of § 80.598, and all recordkeeping and reporting

requirements of §§ 80.592 (except for paragraph (a)(3)), 80.593, 80.594, 80.600, and 80.601.

* * * * *

(4) [Reserved]

* * * * *

5. Section 80.550 is amended by revising paragraph (b)(3) to read as follows:

§ 80.550 What is the definition of a motor vehicle diesel fuel small refiner or a NRLM diesel fuel small refiner under this subpart?

* * * * *

(b) * * *

(3) Had an average crude oil capacity less than or equal to 155,000 barrels per calendar day (bpcd) for 2002.

* * * * *

6. Section 80.551 is amended by revising paragraph (f) to read as follows:

§ 80.551 How does a refiner obtain approval as a small refiner under this subpart?

* * * * *

(f) Approval of small refiner status for refiners who apply under § 80.550(d) will be based on all information submitted under paragraph (c)(1)(ii) and/or (c)(2)(ii) of this section, except as provided in § 80.550(e). ~~☞~~ ***NOTE: the version of this rule that was signed on July 6, 2005 refers to “(c)(ii)”;*** as shown above, the corrected text is ***“(c)(1)(ii) and/or (c)(2)(ii).”***

* * * * *

7. Section 80.580 is amended by revising paragraphs (c)(1) and (c)(2)(i) to read as follows:

§ 80.580 What are the sampling and testing methods for sulfur?

* * * * *

(c) * * *

(1) Until December 27, 2004, for motor vehicle diesel fuel and diesel fuel additives subject to the 15 ppm standard of § 80.520(a)(1), sulfur content may be determined using ASTM D 5453-03a or ASTM D 3120-03a, provided that the refiner or importer test result is correlated with the appropriate method specified in paragraph (b)(1) of this section.

(2) * * *

(i) For motor vehicle diesel fuel and diesel fuel additives subject to the 500 ppm sulfur standard of § 80.520(c), and for NRLM diesel fuel subject to the 500 ppm sulfur standard of § 80.510(a), sulfur content may be determined using ASTM D 4294-03, ASTM D 5453-03a, or ASTM D 6428-99, provided that the refiner or importer test result is correlated with the appropriate method specified in paragraph (b)(2) of this section; or

* * * * *

8. Section 80.586 is amended by revising the section heading to read as follows:

§ 80.586 What are the record retention requirements for test methods approved under this subpart?

* * * * *

9. Section 80.590 is amended by revising paragraph (a)(6)(i) to read as follows:

§ 80.590 What are the product transfer document requirements for motor vehicle diesel fuel, NRLM diesel fuel, heating oil and other distillates?

(a) * * *

(6) * * *

(i) The facility registration number of both the transferor and transferee issued under § 80.597, if any.

* * * * *

10. Section 80.591 is amended by revising paragraph (b)(3) to read as follows:

§ 80.591 What are the product transfer document requirements for additives to be used in diesel fuel?

* * * * *

(b) * * *

(3) If the additive contains a static dissipater additive having a sulfur content greater than 15 ppm, include the following statement:

“This diesel fuel additive contains a static dissipater additive having a sulfur content greater than 15 ppm.”

* * * * *

11. Section 80.594 is amended by revising paragraph (b)(2) to read as follows:

§ 80.594 What are the pre-compliance reporting requirements for motor vehicle

diesel fuel?

* * * * *

(b) * * *

(2) In the case of a refinery with an approved application under § 80.552(c), a demonstration that by June 1, 2006, 95 percent of its motor vehicle diesel fuel will be at 15 ppm sulfur at a volume meeting the requirements of § 80.553(e).

* * * * *

12. Section 80.595 is amended by revising the first sentence of paragraph (a) and paragraph (b) to read as follows:

§ 80.595 How does a refiner apply for a motor vehicle diesel fuel volume baseline?

(a) Any small refiner applying for an extension of the duration of its small refiner gasoline sulfur standards of § 80.240, under §§ 80.552(c) and 80.553, any small refiner applying to produce MVDF under § 80.552(a), or any refiner applying for an extension of the duration of the GPA standards under § 80.540 must apply for a motor vehicle diesel fuel volume baseline by December 31, 2001. * * *

(b) The volume baseline must be sent via certified mail with return receipt or express mail with return receipt to: U.S. EPA-Attn: Diesel Baseline, 1200 Pennsylvania Avenue, NW (6406J), Washington, DC 20460 (certified mail/return receipt) or Attn: Diesel Baseline, Transportation and Regional Programs Division, 1310 L Street, NW (6406J), Washington, DC 20005 (express mail/return receipt).

NOTE: the version of this rule that was signed on July 6, 2005 stated the express mail address as “501 3rd Street, NW (6406J), Washington, DC 20001”; as shown above, the correct address is “1310 L Street, NW (6406J), Washington, DC 20005.”

* * * * *

13. Section 80.596 is amended by revising the values for V_{base} and V_i in paragraph (a) to read as follows:

§ 80.596 How is a refinery motor vehicle diesel fuel volume baseline calculated?

(a) * * *

V_{base} = Volume baseline value, in gallons.

V_i = Volume of motor vehicle diesel fuel batch i, in gallons. * * *

* * * * *

14. Section 80.599 is amended as follows:
- a. By revising paragraph (a) introductory text and paragraph (a)(1).
 - b. By revising the value for MV_I in paragraph (b)(1).
 - c. By revising the values for $MV15_I$ and $MV500_I$ in paragraph (b)(2).
 - d. By revising the equation for $MVNB_E$ and the value of $\sum MVB$ in paragraph (b)(4).
 - e. By revising the value of $HSNRLM_I$ in paragraph (c)(1).
 - f. By revising the value of HO_I in paragraph (c)(3).
 - g. By revising the value of $NR500_I$ in paragraph (d)(1).
 - h. By revising the value of $LM500_I$ in paragraph (d)(2)(ii).
 - i. By revising the equation for $(\#2MV15_O - \#2MV15_P + \#2MV15_{INVCHG})$ and value of $\#2MV15_I$ in paragraph (e)(2).
 - j. By adding the value of $\#2MV15_P$ to paragraph (e)(2).
 - k. By revising the equation for $\#2MV500_O$ and value of $\#2MV500_I$ in paragraph (e)(3).
 - l. By adding the value of $\#2MV500_P$ to paragraph (e)(3).
 - m. By revising the equation for $\#2MV500_O$ and value of $\#1MV15_I$ in paragraph (e)(4).
 - n. By adding the value of $\#1MV15_P$ to paragraph (e)(4).
 - o. By revising the equation for $\#2MV500_O$ and value of $\#1MV15_B$ to paragraph (e)(5).
 - p. By adding the value of $\#2MV500_P$ to paragraph (e)(5).

§ 80.599 How do I calculate volume balances for designation purposes?

(a) Quarterly compliance periods. The quarterly compliance periods are shown in the following table:

Quarterly Compliance Periods and Reporting Dates

<u>Quarterly Compliance Period^A:</u>	<u>Report Due Date:</u>
<u>July 1 through September 30</u>	<u>November 30</u>
<u>October 1 through December 31</u>	<u>February 28</u>
<u>January 1 through March 31</u>	<u>May 31</u>

April 1 through June 30

August 31

^A The first quarterly reporting period will be from June 1, 2007 through September 30, 2007 and the last quarterly compliance period will be from April 1, 2010 through May 31, 2010.

(1) Annual compliance periods. The annual compliance periods before the period beginning July 1, 2016 are shown in the following table:

Annual Compliance Periods and Reporting Dates

Annual Compliance Period:

Report Due Date:

June 1, 2007 - June 30, 2008

August 31

July 1, 2008 - June 30, 2009

August 31

July 1, 2009 - May 31, 2010

August 31

June 1, 2010 - June 30, 2011

August 31

July 1, 2011 - May 31, 2012

August 31

June 1, 2012 - June 30, 2013

August 31

July 1, 2013 - May 31, 2014

August 31

June 1, 2014 - June 30, 2015

August 31

July 1, 2015 - June 30, 2016

August 31

* * * * *

(b) * * *

(1) * * *

$MV_I =$ the total volume of all batches of fuel designated as motor vehicle diesel fuel received for the compliance period. Any motor vehicle diesel fuel produced by or imported into the facility shall also be included in this volume. * * *

(2) * * *

$MV15_I =$ the total volume of all batches of fuel designated as 15 ppm sulfur motor vehicle diesel fuel received for the compliance period. Any motor vehicle diesel fuel produced by or imported into the facility shall also be included in this volume.


$MV500_I =$ the total volume of all batches of fuel designated as 500 ppm sulfur motor vehicle diesel fuel received for the compliance period. Any motor vehicle diesel fuel produced

by or imported into the facility shall also be included in this volume. * * *

* * * * *

(4) * * *

$$MVNB_E = MV15_{BINV} + MV500_{BINV} + \sum MVB$$

 **NOTE:** the version of this rule that was signed on July 6, 2005 added the operand “-”; as shown above, the correct operand “+”.

Where:

$\sum MVB$ = the sum of the balances for motor vehicle diesel fuel for the current compliance period and previous compliance periods. * * *

* * * * *

(c) * * *

(1) * * *

$HSNRLM_I$ = the total volume of all batches of fuel designated as high sulfur NRLM received diesel fuel for the compliance period. Any high sulfur NRLM produced by or imported into the facility shall also be included in this volume. * * *

* * * * *

(3) * * *

HO_I = the total volume of all batches of fuel designated as heating oil received for the compliance period. Any heating oil produced by or imported into the facility shall also be included in this volume. * * *

* * * * *

(d) * * *

(1) * * *

$NR500_I$ = the total volume of all batches of fuel designated as 500 ppm sulfur NR diesel fuel received for the compliance period. Any 500 ppm sulfur NR diesel fuel produced by or imported into the facility shall also be included in this volume. * * *

(2) * * *

(ii) * * *

$LM500_I$ = the total volume of all batches of fuel designated as 500

ppm sulfur LM diesel fuel received for the compliance period. Any 500 ppm sulfur LM diesel fuel produced by or imported into the facility shall also be included in this volume. * * *

(e) * * *

(2) * * *

$$(\#2MV15_O - \#2MV15_P + \#2MV15_{INVCHG}) \geq 0.8 \times \#2MV15_I$$

Where:

$\#2MV15_P$ = the total volume of fuel produced by or imported into the facility during the compliance period that was designated as $\#2D$ 15 ppm sulfur motor vehicle diesel fuel when it was delivered.

$\#2MV15_I$ = the total volume of fuel received during the compliance period that is designated as $\#2D$ 15 ppm sulfur motor vehicle diesel fuel. Any motor vehicle diesel fuel produced by or imported into the facility shall not be included in this volume. * * *

(3) * * *

$$\#2MV500_O \leq \#2MV500_I + \#2MV500_P - \#2MV500_{INVCHG} + 0.2 \times \#2MV15_I$$

Where:

$\#2MV500_I$ = the total volume of fuel received during the compliance period that is designated as $\#2D$ 500 ppm sulfur motor vehicle diesel fuel. Any motor vehicle diesel fuel produced by or imported into the facility shall not be included in this volume.

$\#2MV500_P$ = the total volume of fuel produced by or imported into the facility during the compliance period that was designated as $\#2D$ 500 ppm sulfur motor vehicle diesel fuel when it was delivered. * * *

(4) * * *

$$\#2MV500_O \leq \#2MV500_I + \#2MV500_P - \#2MV500_{INVCHG} + 0.2 * (\#1MV15_I + \#2MV15_I)$$

Where:

$\#1MV15_I$ = the total volume of fuel received during the compliance period that is designated as $\#1D$ 15 ppm sulfur motor vehicle diesel fuel. Any motor vehicle diesel fuel produced by or imported into the facility shall not be included in this

volume.

#1MV15_p = the total volume of fuel produced by or imported into the facility during the compliance period that was designated as #1D 15 ppm sulfur motor vehicle diesel fuel when it was delivered.

(5) * * *

$$\begin{aligned} \#2MV500_O < \#2MV500_I + \#2MV500_P - \#2MV500_{INVCHG} + 0.2 * \#2MV15_I \\ + \#1MV15_B + \#2NRLM500_S \end{aligned}$$

Where:

#1MV15_B = the total volume of fuel received during the compliance period that is designated as #1D 15 ppm sulfur motor vehicle diesel fuel and that the facility can demonstrate they blended into #2D 500 ppm sulfur motor vehicle diesel fuel. Any motor vehicle diesel fuel produced by or imported into the facility shall not be included in this volume.

#2MV500_p = the total volume of fuel produced by or imported into the facility during the compliance period that was designated as #2MV 500 ppm sulfur motor vehicle diesel fuel when it was delivered. * * *

* * * * *

15. Section 80.600 is amended as follows:
 - a. By revising paragraph (a)(6).
 - b. By adding paragraph (a)(13)
 - c. By revising paragraphs (b)(1) introductory text, (b)(1)(i) introductory text, (b)(1)(ii) introductory text, (b)(1)(iii) introductory text, (b)(1)(iv) introductory text, (b)(1)(v) introductory text.
 - d. By revising (b)(2).
 - e. By revising the first sentence of paragraph (b)(3).

§ 80.600 What records must be kept for purposes of the designate and track provisions?

(a) * * *

(6) The records for each batch with designations identified in paragraphs (a)(1)

through (a)(5) of this section must clearly and accurately identify the batch number (including an indication as to whether the batch was received into the facility, produced by the facility, imported into the facility, or delivered from the facility), date and time of day (if multiple batches are delivered per day) that custody was transferred, the designation, the volume in gallons of the batch, and the name and the EPA entity and facility registration number of the facility to whom such batch was transferred.

* * * * *

(13) Refiners and importers who also receive fuel from another facility must also comply with the requirements of paragraph (b) of this section separately for those volumes.

(b) * * *

(1) Any distributor shall maintain the records specified in paragraphs (b)(2) through (b)(10) of this section for each batch of distillate fuel with the following designations for which custody is received or delivered as well as any batches produced. Records shall be kept separately for each of its facilities.

(i) For each facility that receives #2D 15 ppm sulfur motor vehicle diesel fuel and distributes any #2D 500 ppm sulfur motor vehicle diesel fuel, records for each batch of diesel fuel with the following designations for which custody is received or delivered as well as any batches produced during the time period from June 1, 2006 through May 31, 2007:

* * * * *

(ii) For each facility, records for each batch of diesel fuel with the following designations for which custody is received or delivered as well as any batches produced during the time period from June 1, 2007 through May 31, 2010:

* * * * *

(iii) For each facility that receives unmarked fuel designated as NR diesel fuel, LM diesel fuel or heating oil, records for each batch of diesel fuel with the following designations for which custody is received or delivered as well as any batches produced during the time period from June 1, 2010 through May 31, 2012:

* * * * *

(iv) For each facility that receives unmarked fuel designated as heating oil, records for each batch of diesel fuel with the following designations for which custody is received or delivered as well as any batches produced during the time period from June 1, 2012 through May 31, 2014:

* * * * *

(v) For each facility that receives unmarked fuel designated as heating oil, records for each batch of diesel fuel with the following designations for which custody is received or delivered as well as any batches produced during the time period beginning June 1, 2014:

* * * * *

(2) Records that for each batch clearly and accurately identify the batch number (including an indication as to whether the batch was received into the facility, produced by the facility, imported into the facility, or delivered from the facility), date and time of day (if multiple batches are delivered per day) that custody was transferred, the designation, the volume in gallons of each batch of each fuel, and the name and the EPA entity and facility registration number of the facility to whom or from whom such batch was transferred.

* * * * *

(3) Records that clearly and accurately identify the total volume in gallons of each designated fuel identified under paragraph (b)(1) of this section transferred, produced, or imported over each of the compliance periods, and over the periods from June 1, 2007 to the end of each compliance period. * * *

* * * * *

16. Section 80.601 is amended as follows:

- a. By revising paragraph (a)(2).
- b. By redesignating paragraphs (a)(4)(iii) through (a)(4)(v) as paragraphs (a)(4)(iv) through (a)(4)(vi).
- c. By adding paragraph (a)(4)(iii).
- d. By revising paragraph (b) introductory text and paragraph (b)(1).
- e. Redesignating paragraphs (b)(3)(ii) through (b)(3)(ix) as paragraphs (b)(3)(iii) through (b)(3)(x).
- f. Adding paragraph (b)(3)(ii).

§ 80.601 What are the reporting requirements for purposes of the designate and track provisions?

(a) * * *

(2) Separately for each designation category and separately for each transferor facility;

(i) The total volume in gallons of distillate fuel designated under § 80.598 for which custody was received by the reporting facility, and the EPA entity and facility registration number(s), as applicable, of the transferor; and

(ii) The total volume in gallons of distillate fuel designated under § 80.598 which was produced or imported by the reporting facility.

* * * * *

(4) * * *

(iii) The total volumes produced or imported at the facility of each fuel designation required to be reported in paragraphs (a)(1) through (a)(3) of this section over the quarterly compliance period.

* * * * *

(b) Annual reports. Beginning August 31, 2007, all entities required to maintain records for batches of fuel under § 80.600 must report the following information separately for each of its facilities to the Administrator on an annual basis, as specified in paragraph (d)(2) of this section:

(1) Separately for each designation category for which records are required to be kept under § 80.600 and separately for each transferor facility;

(i) The total volume in gallons of distillate fuel designated under § 80.598 for which custody was received by the reporting facility, and the EPA entity and facility registration number(s), as applicable, of the transferor; and

(ii) The total volume in gallons of distillate fuel designated under § 80.598 which was produced or imported by the reporting facility.

* * * * *

(3) * * *

(ii) The total volumes produced or imported at the facility of each fuel designation required to be reported in paragraph (b)(1) of this section over the quarterly compliance period.

* * * * *

17. Section 80.604 is amended by removing and reserving paragraph(d)(5).

18. Section 80.613 is amended by revising paragraph (a)(1) introductory text to read as follows:

§ 80.613 What defenses apply to persons deemed liable for a violation of a prohibited act under this subpart?

(a) * * *

(1) Any person deemed liable for a violation of a prohibition under § 80.612(a)(1)(i), (a)(1)(iii), (a)(2), or (a)(3), will not be deemed in violation if the person demonstrates all of the following, as applicable:

* * * * *